

STATE OF NORTH DAKOTA
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF:)
)
North Dakota State Board of Medical)
Examiners-Investigative Panel B,)
)
Complainant,)
)
vs.)
)
John D. Huff, M.D.)
)
Respondent.)

**RECOMMENDED
FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

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On December 3, 2003, a Complaint was filed with the North Dakota State Board of Medical Examiners ("Board") by John M. Olson, special assistant attorney general, counsel for the Board's Investigative Panel B, requesting revocation of, or other appropriate action against, the license to practice medicine in North Dakota of John D. Huff, M.D., Respondent ("Huff"). The Complaint cites as grounds for revocation, or other appropriate administrative action, acts or conduct under N.D.C.C. § 43-17-31(25), specifically that "[o]n August 24, 2003, the Texas State Board of Medical Examiners entered an Order restricting the Respondent's Texas medical license to practice under certain terms and conditions, specifically based upon a finding that Respondent failed to meet an acceptable standard of care in the treatment of four patients, which is a violation of N.D.C.C. § 43-17-31(21)."

Huff admitted service of the Complaint on December 8, 2003, and on December 9, 2003, sent a letter to Mr. Olson stating, "I received your letter of 12/3/2003 and am returning the signed

Admission of Service. I am interested in attending the hearing. I will call you in the near future."

On December 12, 2003, the Board requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings to conduct a hearing and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to the Complaint. On December 15, 2003, the undersigned ALJ was designated.

The ALJ issued a Notice of Hearing on December 16, 2003, scheduling a January 28, 2004, hearing. The Notice of Hearing was served on Huff by certified mail and a return receipt indicates that Huff signed the return receipt on December 18, 2003. The hearing was held as scheduled on January 28, 2004, in the Office of Administrative Hearings, Bismarck, North Dakota. Investigative Panel B was represented by Mr. Olson. Huff was not present at the hearing. Mr. Olson said that he had not received a call from Huff and had no other contact with him. The ALJ has not had a call from Huff or any other contact with him. No one has indicated they are representing Huff in this matter, though Huff was represented in a previous matter before the Board. Only one witness testified at the hearing, Mr. Rolf P. Sletten, the Board's Executive Secretary and Treasurer. Three exhibits were offered and admitted. The ALJ took official notice of previous Board disciplinary action against Huff. *See* attached Exhibit List.

At the close of the hearing the ALJ heard brief oral argument from counsel.

Based on the evidence presented at the hearing and the oral argument of counsel, the administrative law judge makes the following recommended findings of fact and conclusions of law.

FINDINGS OF FACT

1. Huff is currently a physician licensed to practice medicine in North Dakota. His license number is 8571. His license is valid through December 31, 2004. Huff is also licensed to practice medicine in Arkansas and Texas. Huff is certified as an ophthalmologist. *See* exhibits 1 and 2.

2. The Board took disciplinary action recently against Huff. *See* September 10, 2003, Recommended Findings of Fact, Conclusions of Law and Order, and November 21, 2003, final Order. Official Notice.

3. As a result of a July 17, 2002, Complaint against "John David Huff," on August 24, 2003, the Texas State Board of Medical Examiners ("Texas Board") issued a Final Order taking disciplinary action against Huff based on serious quality of care issues regarding four of his patients. Exhibit 3. Huff's acts or conduct determined in the Texas Final Order would be a continued pattern of inappropriate care as a physician in North Dakota. *Id.*; Testimony of Mr. Sletten; *see* N.D.C.C. § 43-17-31(21).

4. The disciplinary action in Texas "restricted" Huff's Texas license. Exhibit 3, Texas Final Order. It prohibits him from ever again practicing ophthalmology or surgery in Texas and, effectively, suspends him from the practice of medicine of any kind in Texas unless the restriction is lifted upon compliance with the Texas Board's imposed conditions, which include payment of a \$29,000 administrative penalty. *Id.*

CONCLUSIONS OF LAW

1. Huff is currently a physician licensed to practice in North Dakota under the provisions of N.D.C.C. ch. 43-17.

2. The evidence shows, by the greater weight of the evidence, that Huff engaged in acts or conduct as a physician in Texas that would be grounds for disciplinary action by the

Board under the provisions of N.D.C.C. § 43-17-31(21). These acts or conduct were grounds for imposition of disciplinary action by the Texas Board against Huff. The disciplinary action imposed by the Texas Board "restricted" Huff's license in Texas and requires him to pay a substantial administrative penalty. The disciplinary action imposed by the Texas Board amounts to a revocation of Huff's practice of ophthalmology and surgery in Texas and a suspension of any other practice of medicine unless the restriction is lifted upon compliance with conditions.

3. N.D.C.C. § 43-17-31(25) states as a ground for disciplinary action by the Board, "[t]he imposition by another state or jurisdiction of disciplinary action against a license ...based upon acts or conduct by the physician that would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action."

4. The Board has authority to take various disciplinary action against Huff upon any of the grounds for disciplinary action listed under N.D.C.C. § 43-17-31, including revocation. N.D.C.C. § 43-17-30.1.

5. The Board has authority under N.D.C.C. § 43-17-31.1 to direct a physician who has disciplinary action imposed against him for violations of law, to pay to the Board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the Board and its investigative panel in the investigation and prosecution of the case.

RECOMMENDED ORDER

The greater weight of the evidence shows that disciplinary action may be taken against Huff upon the grounds of the provisions of law as alleged in the Complaint and as stated in the Findings of Fact and Conclusions of Law. At the close of the hearing counsel for Investigative Panel B recommended that the Board revoke Huff's license to practice medicine in North Dakota

because of the Texas Board's disciplinary action and because of the Board's recent disciplinary action against Huff. The ALJ recommends REVOCATION as well as the imposition of payment of reasonable and actual costs under N.D.C.C. § 43-17-31.1, as the Board determines is appropriate.

Dated at Bismarck, North Dakota, this 29th day of January, 2004.

State of North Dakota
Board of Medical Examiners

By: _____
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Administrative Law Judge
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